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Marc Jeston Byrd

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SUN MICROSYSTEMS

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EXAMINER

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3  
4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 *Ex parte* MARC JESTON BYRD and  
9 MANISH KRISHNARAO KALBANDE  
10

11  
12 Appeal 2009-000381  
13 Application 09/867,645  
14 Technology Center 3600  
15

16  
17 Decided: October 8, 2009  
18  
19

20 Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and BIBHU R.  
21 MOHANTY, *Administrative Patent Judges*.  
22 FETTING, *Administrative Patent Judge*.

23 DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 Marc Jeston Byrd and Manish Krishriarao Kalbande (Appellants) seek  
3 review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-29, the  
4 only claims pending in the application on appeal.

5 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)  
6 (2002).

7 SUMMARY OF DECISION<sup>1</sup>

8 We AFFIRM-IN-PART.

9 THE INVENTION

10 The Appellants invented a way for delivering customer profile and  
11 billing information upon enrollment in Internet bill presentment and  
12 payment environments (Specification 2:¶ 001).

13 An understanding of the invention can be derived from a reading of  
14 exemplary claims 1 and 8 which are reproduced below [bracketed matter and  
15 some paragraphing added].

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<sup>1</sup> Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed April 23, 2007) and Reply Brief ("Reply Br.," filed September 5, 2007), and the Examiner's Answer ("Ans.," mailed September 5, 2007).

1           1. In a bill presentment and payment environment with a  
2           scheduled time to communicate billing information with a set of  
3           billers,  
4           a bill presentment and payment method comprising:  
5           [1] receiving customer registration information, including  
6           information sufficient to identify the customer;  
7           [2] providing the customer identification information to one of  
8           the billers  
9                       as part of a first request indicating enrollment in the bill  
10                      presentment and payment system; and  
11           [3] permitting access by the customer to billing information  
12           from the one of the billers at an unscheduled time.

13           8. A system for permitting real-time access by a customer to  
14           billing information in an Internet bill presentment and payment  
15           environment,  
16           the system comprising:  
17           [1] a consolidator module; and  
18           [2] a biller module,  
19                       connected to the consolidator module,  
20                       wherein the biller module includes  
21                       [3] biller-independent submodules  
22                               for communicating with the consolidator module;  
23                       [4] biller-dependent modules  
24                               for retrieving information from data stored by the  
25                               biller; and  
26                       [5] an interface  
27                               enabling the biller-independent submodules to  
28                               interact with the biller-dependent submodules.

THE REJECTIONS

The Examiner relies upon the following prior art:

Haseltine                      US 6,578,015 B1              Jun. 10, 2003

PR Newswire, *Sun-Netscape Alliance's New Internet Billing Consolidation Application to Help Make Internet Billing a Reality for Consumers*, Dec 6, 1999. pg. 1 (Newswire)

Claims 8-10 stand rejected under 35 U.S.C. § 102(e) as anticipated by Haseltine.

Claims 1-7 and 14-20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Haseltine and Newswire.

Claims 11-13 and 21-29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Haseltine.

ISSUES

The issue of whether the Appellants have sustained their burden of showing that the Examiner erred in rejecting claims 8-10 under 35 U.S.C. § 102(e) as anticipated by Haseltine turns on whether Haseltine describes the data retrieval structure of claim 8.

The issue of whether the Appellants have sustained their burden of showing that the Examiner erred in rejecting claims 1-7 and 14-20 under 35 U.S.C. § 103(a) as unpatentable over Haseltine and Newswire turns on whether Haseltine describes the data retrieval steps of claims 1 and 6.

1 The issue of whether the Appellants have sustained their burden of  
2 showing that the Examiner erred in rejecting claims 11-13 and 21-29 under  
3 35 U.S.C. § 103(a) as unpatentable over Haseltine turns on whether  
4 Haseltine describes the data retrieval steps of claims 1 and 6 in the above  
5 rejection and on whether Haseltine describes the components enumerated in  
6 claims 11 and 12.

#### 7 FACTS PERTINENT TO THE ISSUES

8 The following enumerated Findings of Fact (FF) are believed to be  
9 supported by a preponderance of the evidence.

#### 10 *Facts Related to Claim Construction*

11 01. The term "consolidator" refers to any Internet bill presentment  
12 and payment (IBPP) system that is requesting billing data.  
13 Specification p.4, ¶ [007].

14 02. The term "biller" refers to any IBPP system having billing data.  
15 Specification p.4, ¶ [007].

#### 16 *Facts Related to the Prior Art*

#### 17 *Haseltine*

18 03. Haseltine is directed to a powerful, automated and flexible  
19 infrastructure for electronically presenting, processing, viewing  
20 and paying bills and other requests for payment over a computer  
21 network, such as the Internet. Haseltine col. 1, ll. 8-14.

1           04. A secure bill presentment infrastructure should allow customers  
2           to be presented with and view bills as they would normally appear  
3           with the ability to view a summary and/or a detailed form of the  
4           bill and schedule bills for auto-payment to pay the bill  
5           electronically. Haseltine 2:6-17.

6           05. Bill consolidators exist, which allow customers to electronically  
7           log onto a single site on the World Wide Web (hereafter Web) and  
8           pay bills originating from a number of individual billers. Such  
9           consolidators may be generally categorized as thin consolidators  
10          or thick consolidators. Haseltine 2:31-44.

11          06. Thin consolidators typically carry only bill summaries and refer  
12          the customer to the biller's own Web site for further detailed bills  
13          and/or further customer service, such as to discuss a disputed bill.  
14          Haseltine 2:39-42.

15          07. Thick consolidators typically carry the biller's entire customer  
16          data and often act as their own payment processors. In the thick  
17          consolidator case, the biller's involvement in the presentment and  
18          payment process may be limited to providing the thick  
19          consolidator with the necessary customer bill data and collecting  
20          the payment after the customer payment has been received and  
21          processed. Haseltine 2:42-48.

1           08. Haseltine describes receiving biller-originated bill data and bill  
2           format data over the network into a bill presentment and payment  
3           database; storing and validating the inputted bill data and bill  
4           format data making the data accessible to the customer; and  
5           presenting the bill to the customer. Haseltine 3:1-18.

6           09. Haseltine's Fig. 3 is a graphical representation of the  
7           relationship and communication paths among billers, customers,  
8           consolidators and payment processors. When a customer logs  
9           onto the Web site of a thick consolidator to view and pay bills for  
10          one or more billers having contracted with the thick consolidator,  
11          both the bill summary data and the bill detail data may be  
12          available from the thick consolidator's database. Any payment  
13          requests are sent to a payment processor. Haseltine 9:47 – 10:37.

14          10. A thin consolidator maintains a customer-accessible link to the  
15          billers to provide the customer with detail bill data, customer  
16          service or other customer services. For example, the thin  
17          consolidator may maintain a customer-specific Universal  
18          Resource Locator (URL) to the billers' Web site linking the  
19          customer directly into a Web page containing the customer's  
20          (detailed) billing data. Haseltine 10:45 – 11:14.

21          11. Haseltine's Fig. 2 illustrates an electronic bill generation and  
22          payment cycle in which a biller submit bills data to a translator to  
23          transform the data in a format appropriate for storage in the  
24          electronic bill presentment and payment database. A bank may be  
25          bypassed altogether, and the payment processor may remit the



1 processed customer payments directly to the biller. Haseltine  
2 11:32–61.

3 12. Haseltine’s Fig. 6 is the block diagram of a system architecture  
4 for managing the database of Fig. 4 which is coupled to the bill  
5 presentment and payment application logic which includes  
6 presentment logic for presenting the formatted online customer  
7 bill to the customers via the user interface. Haseltine 11:63 –  
8 12:11.

9 *News wire*

10 13. News wire is directed to an Internet billing consolidation  
11 application. News wire: Title.

12 14. “[A] common standard for Internet bill presentment and  
13 payment will help drive the mass adoption of electronic billing by  
14 encouraging multiple billers, such as credit card companies,  
15 retailers and utilities, to present bills via the banks' Web sites.”  
16 News wire 2: ¶ 2.

17 15. The consumer can log onto their online banking site to view  
18 their bills from their service providers and pay the bills or link to  
19 the provider’s site for more detailed billing information. The  
20 billers can then reach customers more than once a month.  
21 News wire 2: ¶ 5.

22 16. Billers can also use the application as a secure medium to send  
23 detailed information about a customer’s account to the bank’s site.  
24 News wire 2: ¶ 8.

1        *Facts Related To The Level Of Skill In The Art*

2            17. Neither the Examiner nor the Appellants have addressed the  
3            level of ordinary skill in the pertinent arts of systems analysis and  
4            programming, remittance processing systems, bill presentment  
5            and payment processing system design, or network systems  
6            design. We will therefore consider the cited prior art as  
7            representative of the level of ordinary skill in the art. *See Okajima*  
8            *v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001)

9            (“[T]he absence of specific findings on the level of skill  
10            in the art does not give rise to reversible error “where  
11            the prior art itself reflects an appropriate level and a  
12            need for testimony is not shown.” (*quoting Litton Indus.*  
13            *Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163,  
14            225 USPQ 34, 38 (Fed.Cir.1985).)

15           18. A user interface within a client server architecture on the  
16           Internet is a client object to the server that provides data or  
17           communications services.

18        *Facts Related To Secondary Considerations*

19           19. There is no evidence on record of secondary considerations of  
20           non-obviousness for our consideration.

PRINCIPLES OF LAW

*Anticipation*

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

*Obviousness*

A claimed invention is unpatentable if, "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 399 and 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

In *Graham*, the Court held that that the obviousness analysis is bottomed on several basic factual inquiries: "[ (1) ] the scope and content of the prior art are to be determined; [ (2) ] differences between the prior art and the claims at issue are to be ascertained; and [ (3) ] the level of ordinary skill in the pertinent art resolved." *Graham*, 383 U.S. at 17. *See also KSR*, 550

1 U.S. at 406. “The combination of familiar elements according to known  
2 methods is likely to be obvious when it does no more than yield predictable  
3 results.” *KSR*, 550 U.S. at 416.

#### 4 ANALYSIS

5 *Claims 8-10 rejected under 35 U.S.C. § 102(e) as anticipated by Haseltine.*

6 The Examiner found that Haseltine’s Fig. 3 anticipates the claim 8  
7 system, aligning Haseltine’s thick and thin consolidators with the claimed  
8 consolidator module Haseltine’s billers with the claimed biller module that  
9 contains biller independent and dependent modules. The Examiner found  
10 that Haseltine’s interaction between a thick consolidator and its database  
11 described biller independent communication and that Haseltine’s interaction  
12 between a thin consolidator and its biller described biller dependent  
13 communication. The Examiner also found that Haseltine’s interface among  
14 billers, consolidators and payment processors described the claim 8  
15 interface. Ans. 3.

16 The Appellants present several arguments. They first argue that the  
17 thick consolidators and thin consolidators do not constitute the claimed  
18 "biller-independent submodules" and "biller-dependent submodules" at least  
19 because these consolidators are part of the consolidator module, not the  
20 biller module. App. Br. 15. This argument is moot because the Examiner  
21 has not aligned the elements as such. Much of the remaining arguments  
22 appear to arise from a fundamental misunderstanding of how the Examiner  
23 has aligned Haseltine with claim 8.

24 For the Examiner’s findings to make sense, the biller-independent and  
25 dependent modules that communicate with the consolidator module and

1 biller must align with the communication structures of Haseltine. Thus, the  
2 Examiner's phrase of a consolidator module (FIG 3, 350 and 360) is further  
3 elaborated by the specific findings that thick consolidators maintain  
4 databases of accounts related to the various billers; thin consolidators access  
5 information maintained at the biller sites; and interfacing the information  
6 obtained at the biller site, with account information maintained at the  
7 consolidator and payment processing capabilities. Ans. 3.

8 So we take the Examiner's reference for biller modules as being the  
9 blocks in Fig. 3 referring to the billers, as more precisely referring to the  
10 communication links to the billers, and as aligning Haseltine's  
11 communication structure with the claimed biller module. Then Haseltine's  
12 internal communication with its own database, *e.g.* Haseltine Fig. 6, and  
13 external communication with payment processors, *e.g.* Haseltine Fig. 3: 355,  
14 describes the claimed biller independent module. Haseltine's external  
15 communication with billers, *e.g.* Haseltine Fig. 3: 320, describes claimed  
16 biller dependent module. *See* FF 09 & 10.

17 When the Examiner's findings are properly understood, the remaining  
18 arguments are readily addressed. The next argument is that nothing in  
19 *Haseltine* discloses a thin consolidator "for retrieving information from data  
20 stored by the biller," as recited in claim 8. This is in error, and in fact  
21 ignores the very purpose of a bill consolidator, which is to retrieve such  
22 information. Haseltine describes receiving biller-originated bill data and bill  
23 format data over the network into a bill presentment and payment database.  
24 FF 08. While this retrieval is asynchronous with respect to a user query,  
25 nothing in claim 8 requires such synchronization.

The next argument is that Haseltine does not teach or suggest "biller-dependent modules for retrieving information from data stored by the biller; and an interface enabling the biller-independent submodules to interact with the biller-dependent submodules." App. Br. 16. Since Haseltine's retrieved data is entered into its internal database, this entry describes the required interaction between biller dependent and biller independent modules. The claim does not limit the manner of interaction.

As to claims 9 and 10, the Appellants argue that a website where a customer can view and pay bills does not teach or suggest the claimed "client object." The Appellants contend that Haseltine discloses a relational database and does not disclose embodiments implemented as another type of databases. Appellants conclude that that no objects are disclosed by Haseltine so it does not teach or suggest the claimed, "a client object, connected to the bill presentment and payment module," as recited in claim 9." App. Br. 17, Reply Br. 3. We find to the contrary that Haseltine describes providing a user interface connected to the Internet to its bill presentment and payment module. FF 12. Such a user interface is a client object to the servers feeding it data across the Internet. FF 18.

*Claims 1-7 and 14-20 rejected under 35 U.S.C. § 103(a) as unpatentable over Haseltine and Newswire.*

Claims 1 and 6 are the independent method claims in this rejection. Claims 14 and 19 are computer readable media analogs of claims 1 and 6. All of the independent claims require performing a step in an unscheduled time within an environment with scheduled communications. The Examiner

1 applied Newswire to describe this limitation. This finding is not under  
2 contention.

3 As to claim 1, the Appellants argue that neither limitation [1] nor [2] is  
4 described. App. Br. 19-20. The Examiner found that Haseltine's customer  
5 registration described limitation [1] and the customer accessing Haseltine's  
6 user interface described limitation [2]. Ans. 4-5. The Appellants contend  
7 that because the customers log onto the system where the enrollment data is  
8 stored, the customer does not provide identification "information to one of  
9 the billers as part of a first request indicating enrollment." App. Br. 19. The  
10 Examiner responds that the customer identification and other enrollment  
11 information must be provided to the biller for Haseltine to retrieve the  
12 billing data. Ans. 17.

13 We agree with the Examiner that customer identification information is  
14 required to retrieve customer account information from billers. Clearly  
15 Haseltine's customer registration provides customer identification  
16 information. The Appellants next argue that any such transmission to a  
17 biller would not be part of the first request. Reply Br. 5. The Appellants  
18 appear to be arguing that such a transmission would not be part of the  
19 customer registration reception in limitation [1]. This argument is not  
20 commensurate with the scope of the claim, as there is no requirement that  
21 the first request indicating enrollment in limitation [2] be part of the data  
22 reception in limitation [1].

23 The Appellants also contend that any transmission to the biller after  
24 customer enrollment would not be a first request indicating enrollment.  
25 Again, the argument is not commensurate with the scope of the claim. The

1 claim does not specify whether the adjective “first” is meant to denote  
2 temporal placement or mere ordinal designation.

3 Further, the Appellants argue that Haseltine’s customer enrollment itself  
4 occurs without the request to the biller. But even if the word “first” is  
5 construed as temporal placement, the claim does not specify to whom the  
6 required first request is made. As the Examiner found, the sending of  
7 customer identification information to a biller after customer registration  
8 would be the first request to the biller indicating enrollment.

9 Finally, the Appellants argue that Newswire does not describe limitation  
10 [2]. App. Br. 21. But as the Examiner responded, Haseltine is applied to  
11 show that limitation. Ans. 17. Thus we find that Haseltine does describe  
12 limitations [1] and [2].

13 Claim 2 requires transmitting a second request to the one of the billers to  
14 access billing information; and receiving the billing information from the  
15 one of the billers. The Examiner found that Haseltine described this when a  
16 customer logged onto a biller’s website. Ans. 5. The Appellants argue that  
17 such a logon from a link provided by the consolidator cannot constitute  
18 “transmitting a second request to the one of the billers to access billing  
19 information” but that even if it could, because there is only a single URL for  
20 each biller, a second request would be for a different biller than the first.  
21 Appeal Br. 21-22. The Appellants’ arguments are unpersuasive. Claim 2  
22 does not require the second request to be from the consolidator, only that it  
23 be to one of the billers. Haseltine’s link to a biller accessed by a customer  
24 would form such a request. FF 10. Since the first request was found to be  
25 that performed by the consolidator in setting up the customer’s account with



1 the biller, there is no issue with a single URL. Also, it would be within the  
2 suggested operation of Haseletine for a customer to access the same link  
3 twice creating two requests.

4 The Appellants rely on the above arguments in support of claims 3-5 and  
5 14-18. App. Br. 22.

6 Independent claim 6 requires receiving, from a requesting IBPP system,  
7 a request for information associated with a customer; retrieving the  
8 requested information; and forwarding the retrieved information to the  
9 requesting IBPP system at an unscheduled time. The Examiner found that  
10 Haseltine described this as a continuation of the steps in claim 1. The  
11 Examiner found that the initial data retrieval and transmission of customer  
12 billing data from a biller to a consolidator following customer registration  
13 formed the request, retrieval and forwarding of claim 6. Ans. 18-19. In  
14 response the Appellants contend that Newswire does not describe  
15 forwarding information at an unscheduled time. Reply Br. 7. This is after  
16 the Examiner found that Newswire suggested the desirability and capability  
17 of transmitting such information at any time. Ans. 6-7.

18 We agree with the Examiner. Newswire describes how consumers log  
19 onto their online banking site to view their bills from their service providers  
20 and pay the bills or link to the provider's site for more detailed billing  
21 information so that the billers can then reach customers more than once a  
22 month. FF 15. Billers send detailed information about a customer's account  
23 to the bank's site. FF 16. So billers send detailed information more often  
24 than the monthly schedule to the bank's site. This explicitly recites the

1 retrieval and forwarding of data at unscheduled times and suggests doing so  
2 in response to customer queries for such detailed information.

3 The Appellants rely on the above arguments in support of claims 7, 19,  
4 and 20. App. Br. 24.

5 *Claims 11-13 and 21-29 rejected under 35 U.S.C. § 103(a) as unpatentable*  
6 *over Haseltine.*

7 With respect to claims 11 and 12 depending from claim 8, they each  
8 require a server object, which receives a request from the consolidator  
9 module; a request handler, connected to the server object; and an  
10 implementation object which receives the request from the request handler.

11 The Examiner found that Haseltine described the consolidator module  
12 requesting information from the biller and the biller handling and  
13 implementing the request. The Examiner found that the use of a server  
14 object, request handler, and implementation object would have been an  
15 obvious design choice. In response, the Appellants argue that the Examiner  
16 has failed to articulate a reason that one of ordinary skill would use such  
17 tools. Reply Br. 9. Here we must agree with the Appellants. The Examiner  
18 has provided no evidence of the design and use of the tools enumerated in  
19 these claims or that their use was predictable. We find that the Examiner  
20 has failed to present a prima facie case as to claims 11 and 12, and as to  
21 claim 13 depending from claim 12.

22 The remaining independent claims 21-23 and 28 are similar to claims 1  
23 and 6 absent the recitation of scheduled and unscheduled activity for which  
24 Newswire was applied. The Appellants argue claim 21 similar to the  
25 argument of claim 1 *supra* and we find them unpersuasive for the same

1 reasons. App. Br. 27-28. The Appellants rely on the arguments in support  
2 of claim 21 for claim 23 and the patentability of claim 23 for dependent  
3 claims 24-27. The Appellants also rely on the arguments for claim 2 which  
4 we found unpersuasive *supra* for claim 24. App. Br. 29. The Appellants  
5 argue claim 22 similar to the argument of claim 6 *supra* and we find them  
6 unpersuasive for the same reasons. App. Br. 29-30. The Appellants rely on  
7 the arguments in support of claim 22 for claim 28 and the patentability of  
8 claim 28 for dependent claim 29.

## 9 CONCLUSIONS OF LAW

10 The Appellants have not sustained their burden of showing that the  
11 Examiner erred in rejecting claims 8-10 under 35 U.S.C. § 102(e) as  
12 anticipated by Haseltine.

13 The Appellants have not sustained their burden of showing that the  
14 Examiner erred in rejecting claims 1-7 and 14-20 under 35 U.S.C. § 103(a)  
15 as unpatentable over Haseltine and Newswire.

16 The Appellants have not sustained their burden of showing that the  
17 Examiner erred in rejecting claims 21-29 under 35 U.S.C. § 103(a) as  
18 unpatentable over Haseltine.

19 The Appellants have sustained their burden of showing that the  
20 Examiner erred in rejecting claims 11-13 under 35 U.S.C. § 103(a) as  
21 unpatentable over Haseltine.

## 22 DECISION

23 To summarize, our decision is as follows.

- 1       • The rejection of claims 8-10 under 35 U.S.C. § 102(e) as anticipated  
2       by Haseltine is sustained.
- 3       • The rejection of claims 1-7 and 14-20 under 35 U.S.C. § 103(a) as  
4       unpatentable over Haseltine and Newswire is sustained.
- 5       • The rejection of claims 21-29 under 35 U.S.C. § 103(a) as  
6       unpatentable over Haseltine is sustained.
- 7       • The rejection of claims 11-13 under 35 U.S.C. § 103(a) as  
8       unpatentable over Haseltine is not sustained.

9       No time period for taking any subsequent action in connection with this  
10   appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

mev

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